IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

RCRev..No. 38 of 2007()

RCA.87/2006 of RENT CONTROL APPELLATE AUTHORITY/ADDL. DISTRICT COURT, VADAKARA
RCP.75/2005 of RENT CONTROLLER/MUNSIFF COURT, NADAPURAM
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APPELLANT/PETITIONER:

PAROLLA KUNIYIL PATHU,
D/O.MOIDEEN, AGED 51 YEARS, RESIDING AT PALERI
KANDIYIL NARIPPATTA AMSOM AND DESOM,
VATAKARA TALUK.

BY ADV. SRI.K.SIVAKUMAR

RESPONDENTS:
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1. MEETHALA MENAMKANDIYIL THAMASIKKUM
KACHERI KETTIYAPARAMBATH DEVI,
W/O.KUNHIRAMAN, AGED 61 YEARS,
EDACHERI AMSOM AND DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.

2. KALLURIRAVAUMMAL ASHRAF,
AGED 39 YEARS, S/O.KUNHABDULLA HAJI,
KUNNUMAL PANCHAYAT KML X 691
NUMBER ROOM HARDWARE SHOP NR.SRUTHI CASSETTE
AND VIDEO SHOP, KAKKATTIL P.O., KUNNUMMAL AMSOM
DESOM VATAKARA TALUK, KOZHIKODE DIST.

BY ADV. SRI.GEORGE THOMAS (MEVADA)

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 27/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.

R.C.R.NO.38 OF 2007

Dated this the 27th day of February, 2007

O R D E R

P.R.Raman, J.

The petitioner, first respondent herein, the landlady sought eviction under the Kerala Building (Lease and Rent Control) Act under Section 11(2) (b) 11(3) and 11(4)(i). What survives for consideration is only the ground urged under Section 11(4)(i) as of now. Both the Rent Control Court as well as the Appellate court concurrently found that the sub lease by the petitioner herein in favour of the 2nd respondent stood proved against which present revision is filed.

2. The 2nd respondent remained ex parte in the proceedings. It was the specific contention of the landlady that the Petitioner here in unauthorisedly sub leased the petition schedule shop room to the 2nd respondent on high rent without the knowledge and consent of the landlady and that the business in the petition schedule shop room is now being conducted by the 2nd respondent. Petitioner denied the allegations and further

contended that she has not subleased the petition schedule property to the 2nd respondent and that the hardware business therein being conducted by her with the 2nd respondent, who is only an employee under the petitioner and the present petition is nothing but a ruse for eviction. Exhibits A1 to A3 were marked on the side of the landlady. PW1 was examined. Her husband was examined in the case. There was no documentary evidence adduced by the petitioner. However, the petitioner was examined as RW1. On an appreciation of oral and documentary evidence, the Rent Control Court found that the case of the landlady stood proved.

3. The Appellate Court reappreciated the entire evidence in the matter and confirmed the view as expressed by the Rent Control Court. It was found that the alleged sub lease was denied by the petitioner, only at the advanced stage of giving evidence and she deposed before the court that the 2nd respondent is an employee. It was a new case put forth by the first time in the evidence without any plea. According to the petitioner, there was an agreement with the 2nd respondent based on which he was doing the business along with the petitioner. If in fact, the 2nd

respondent was an employee, there was no occasion for any such agreement. Further it has also come out in evidence that the petitioner was not in good terms with the 2nd respondent and despite such strained relationship no action is seen taken against the 2nd respondent. Still the 2nd respondent was permitted to continue to occupy the building in question. On the totality of the facts and circumstances, the contention as advanced by the petitioner herein was not accepted and the sub lease in favour of the 2nd respondent stands proved.

4. We have carefully gone through the orders passed by the Authorities below and the materials on record and find no reason to interfere with the order passed by the Authorities. Accordingly this Revision is dismissed.

5. At this stage of proceedings, the learned counsel appearing for the revision petitioner sought reasonable time to vacate and surrender possession of the premises.

6. Having heard both sides, we think a reasonable time for enabling the petitioner to surrender vacant possession of the premises could be granted.

7. In the result, the execution of the eviction order will

stand deferred till 30th May 2007 on the following conditions.

1) That the Petitioner shall deposit the entire arrears of rent, if any, within a period of one month from today.

2) He shall continue to pay the amounts equivalent to the monthly rent by way of compensation for use, till vacant possession is given.

3) No third party shall be inducted in the premises before the vacant possession is thus given.

4) A written undertaking in the form of an affidavit shall be filed before the Execution Court within a period of one month agreeing to the above condition.

If the petitioner fails to comply with any of the aforesaid conditions, it will open to the landlady to proceed with the execution forthwith.

P.R.RAMAN, JUDGE

ANTONY DOMINIC, JUDGE

Rp